

RAINBOW BROADCASTING COMPANY EXHIBIT 1

The application of Rainbow Broadcasting Company for construction permit for Channel 65, Orlando, Florida was granted by Commission Order, FCC 85-558, released October 13, 1985. By that Order the Commission denied applications for review of a Review Board Decision, FCC 84R-85, released December 3, 1984, granting Rainbow's application. The Commission's decision was appealed to the United States Court of Appeals for the District of Columbia Circuit (Case No. 85-1755). After submission of briefs but before oral argument, the Commission requested that the Court return the proceeding to the agency. Upon remand (by order of November 5, 1986), the Commission determined that "this licensing proceeding would be held in abeyance pending the outcome of the FCC's proceeding in MM Docket No. 85-484." (Commission Report to the Court, dated February 29, 1988).

Technically, Rainbow did not have a construction permit from November 1986 until June 9, 1988, when the proceeding was ordered returned to the Court of Appeals. The case was decided by the Court on April 21, 1989 and the grant to Rainbow again affirmed. However, on September 20, 1989, Metro Broadcasting, Inc., one of the competing applicants, filed a petition for writ of certiorari with the United States Supreme Court. The Supreme Court granted certiorari and the case was argued on March 28, 1990. By Decision

issued June 29, 1990, the Supreme Court affirmed the grant. By Order of August 30, 1990, the Supreme Court denied a request for rehearing.

Upon denial of rehearing by the Supreme Court, Rainbow engaged engineering services to undertake construction of the station. Actual construction has been delayed by a dispute with the tower owner which is the subject of legal action in the United States District Court for the Southern District of Florida (Case No. 90-2554 CIV MARCUS). A Motion for Preliminary Injunction was heard on January 11, 14 and 16, 1991 and is scheduled to conclude on January 23, 1991, with a decision anticipated shortly thereafter.

Rainbow anticipates that its exclusive right to the use of the tower aperture will be recognized by the District Court. Rainbow is ready, willing and able to proceed with construction upon a ruling from the District Court and anticipates completion of construction within 24 months of a favorable Court action.

Pursuant to Rule 73.3534, Rainbow seeks leave to file this request less than 30 days prior to expiration of its construction permit because the preliminary injunction hearing regarding use of its antenna site was originally scheduled for December 22, 1990, but was postponed until

Rainbow Broadcasting Company
Exhibit 1, page 3

January 11, 1991. Rainbow had expected to be able to report the result of that hearing to the Commission at the time it filed its request for extension. In view of the fact that it is now anticipated that the decision of the District Court will not be forthcoming prior to January 31, 1991, Rainbow is submitting this request less than 30 days prior to the expiration of its permit.

ATTACHMENT C

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of) File No. BMPCT-910125KE
)
RAINBOW BROADCASTING COMPANY)
)
For Extension of)
Construction Permit)

To: The Commission

Opposition to Press Petition for Reconsideration

On February 25, 1991, Press Television Corporation (Press) filed a Petition for Reconsideration, seeking reconsideration of the February 5, 1991 modification of Rainbow Broadcasting Company's construction permit (File No. BMPCT-910125KE) to extend time to complete construction. As discussed below, Press lacks standing to seek reconsideration of the action and its Petition in any event raises no substantive question requiring Commission enquiry.

Press Lacks Standing in this Proceeding. Press Television Corporation unsuccessfully sought to interpose an "Informal Objection" to grant of Rainbow's extension request. Press filed its "Informal Objection" on February 15, 1991, ten days after Rainbow's application had been granted and three days after issuance of the Public Notice, Report No. 21047, February 12, 1991. Having failed

in its informal effort, Press resubmitted its untimely informal objection, explaining that it "formally seeks reconsideration of the grant for all of the reasons set forth in its [informal] Objection," which it appended and "incorporated by reference." Without elaboration, Press asserts that its "petition fully complies with section 1.106, which governs the filing of petitions for reconsideration."

Only the second half of this recitation is correct; Section 1.106 indeed governs reconsideration, but the Press petition fatally ignores its requirements. Section 1.106(b) permits reconsideration to be sought by "any party to the proceeding" or "any other person whose interests are adversely affected" by the Commission's action, but requires that non-parties such as Press "state with particularity the manner in which the person's interests are adversely affected" by the Commission's challenged action. Press' failure to make this requisite showing of standing requires dismissal of its Petition for Reconsideration on jurisdictional grounds.^{1/}

1/ Press' suggestion (Informal Objection, note 2) that it has standing as a potential competing television operator in the Orlando area fails to meet the requirement that it demonstrate how grant of Rainbow's extension request will "aggrieve" Press. Rather, it suggests that what Press seeks here is relitigation of the underlying actions allocating Channel 65 to Orlando and granting a construction permit to Rainbow, both long since final.

Nor is failure of compliance with Section 1.106(b) the only fatal flaw in Press' standing claim, for those who participate as informal objectors are denied standing to seek reconsideration, Redwood Microwave Association, Inc., 61 F.C.C.2d 442, 443 (1976); Max M. Leon, Inc., 58 F.C.C.2d 114, 115 (1976). Simply stated, a party without standing may file an informal objection under Commission Rule 73.3587 (if it is timely, as Press' of course was not), but it does not thereafter elevate its status to that of a person with standing by filing a petition for reconsideration. Thus, while Press here failed to file a timely Informal Objection, even a timely filing would not have conferred standing to file the present Petition for Reconsideration.

Press' Substantive Arguments Are Without Merit. Assuming Press' substantive arguments could be considered, its Petition would nonetheless be fruitless for they are without merit. Press asserts that (1) Rainbow failed to make the requisite showing in support of its extension request under Rule 73.3534; and (2) Rainbow's basic qualifications should be examined before an extension of its construction permit is granted. Both contentions are

Press has no legitimate interest in Rainbow's requested extension, sought some four months after judicial affirmation of the Commission's grant.

meritless and seek only to involve the Commission in private contractual litigation between Rainbow and the owner of the Bithlo Tower, currently pending in the United States District Court for the Southern District of Florida, Rey v. Guy Gannett Publishing Co., Case No. 90-2554.

The central issue in that litigation is whether Gannett, the owner of the Bithlo Tower, has infringed upon Rainbow's lease by its stated intention to lease antenna space to Press within the antenna slot which it leased to Rainbow on an exclusive basis in 1986 and for which Rainbow has already paid over \$200,000 in rent. Press, which is not a party to that litigation, has sought Commission approval of a Channel 68/18 frequency swap on the basis of its claimed right to locate in Rainbow's antenna slot (a location essential to its compliance with the Commission's coverage requirements). When Rainbow urged lack of a site as a fatal impediment to the proposed channel swap, the Commission declined to involve itself in this controversy, noting that it is a matter to be resolved privately between the tower owner and the permittee.^{2/}

^{2/} Traditionally, the Commission has declined to adjudicate private contractual disputes. McAlister Television Enterprises, Inc., FCC 86-334, 60 R.R.2d 1379, 1383-1384. Thus precedent as well as prudence and the Commission's own earlier ruling on the same matter dic-

Report and Order, 4 FCC Rcd. 8320 (MM Bur. 1989). Press' effort to attack Rainbow's construction authorization is simply an improper effort to enlist the aid of the Commission and its processes in depriving Rainbow of the legitimate use of its antenna site.

The grant of Rainbow's construction permit extension was in full compliance with Section 73.3534 and related precedent. On August 30, 1990, the United States Supreme Court finally upheld the Commission's grant of the Channel 65, Orlando, television authorization to Rainbow. Order, Attachment A hereto. Rainbow immediately undertook preparation for construction: a construction engineer was hired; the site owner was informed of Rainbow's intention to proceed with construction (see Memo from Doug Holland to Rick Edwards, Attachment B hereto); and on November 2, 1990, Rainbow initiated legal action (Rev v. Guy Gannett, supra) to prevent the impending infringement of its leasehold by another broadcaster.

Technically, Rainbow's construction permit expired four months after completion of judicial review of its grant. As a practical matter, Rainbow has not yet been afforded the 24 months to construct its facility contem-

tates rejection of Press' effort to involve the Commission in the contract dispute between Rainbow and Gannett.

plated by Rule 73.3598. Moreover, its inability to complete construction has been due to circumstances excusable under Rule 73.3534(b) as clearly beyond its control.

It is Commission practice to grant extensions of time to construct facilities when, as here, the permittee has diligently pursued construction and put substantial financial resources into the effort, but has been delayed by circumstances beyond its control. See FBC, Inc., 3 FCC Rcd. 4595, 65 R.R.2d 263 (MM Bur. 1988); cf. New Orleans Channel 20, Inc. (WULT-TV), 104 F.C.C.2d 304, 60 R.R.2d 820 (1986). Press' effort to cast Rainbow's diligent pursuit of construction of its facilities as improper is baseless. The fact that Rainbow does not choose to abandon the lease exclusivity to which it is entitled is no more "anticompetitive" than the choice not to share one's apartment with a stranger would be "antisocial".^{3/}

The second prong of Press' assault seeks to reopen Rainbow's Channel 65 authorization. To this end, Press

3/ Contrary to Press' assertions, Rainbow does not object to competing with Press-- even with Press' antenna located on the remaining slot on the Bithlo Tower; Rainbow does object to sharing its antenna slot, for which it has paid rent for 5 years to retain exclusivity. Press has known since 1988, when the matter was first raised before the Commission, that Rainbow contests its right to share Rainbow's antenna space. Press' effort to cast the contract dispute as an effort by Rainbow to subvert legitimate competition is as persuasive as the efforts of Cinderella's sisters to fit into the glass slipper.

offers, without benefit of factual support, a cornucopia of allegations in support of its assertion that Rainbow's authorization should be set for hearing to explore its financial qualifications, "anticompetitive behavior", comparative preferences, abuse of process and lack of candor/misrepresentation. While none of these issue requests is accompanied by the showing requisite to a petition to deny under Rule 73.3584 (b), Rainbow will briefly address the defects of each.

In seeking to question Rainbow's financial qualifications, Press asserts that if Rainbow is exploring the possibility of equity financing, it must have "lost" its application financing. In short, Press relies solely upon surmise from its own speculation. Such a showing falls woefully short of the standard for prima facie showing embodied in either Rule 73.3584(b) or 1.229(b). Nothing precludes Rainbow from availing itself of alternative financing, a common occurrence for new stations.

Likewise, Press' charge that Rainbow has abandoned the ownership structure upon which, inter alia, its comparative preference was based, is supported by nothing more than Press' assertion (Informal Objection, page 14) that "some change in Rainbow's ownership structure may be imminent." From this small acorn of speculation, Press

attempts to conjure a mighty oak of possible "undisclosed principals" and "withheld disclosure" without benefit of fact or evidence. In response to Press' wild allegations Rainbow can only attest that there has been no change in its comparative posture or ownership structure. Should Rainbow utilize the equity financing available to it, it will make such timely disclosure to the Commission as the rules require.

Press' allegations of abuse of process and anticompetitive behavior stem entirely from pique that Rainbow insists upon the antenna space exclusivity to which its lease entitles it.^{4/} Rainbow has objected in the past and continues to object to Press' reliance on an asserted right to use Rainbow's antenna space as a basis for seeking Commission approval of its 68/18 channel swap and its license application for Channel 18. Rainbow's objections and its legitimate pursuit of those objections can hardly be said to constitute culpable behavior. Both the Review Board (Naguabo Broadcasting Company, FCC 91R-10, released

4/ There are multiple antenna spaces on the Bithlo Tower. Rainbow claims only that it is entitled to the exclusivity for which it has paid since 1986 with respect to the top slot. See Informal Objection, Attachment A, Exhibit C. Rainbow has no objection to Press' use of any of the remaining antenna spaces on the tower or to Press' construction of its own tower on the nearby available land.

February 19, 1991) and the Commission (PZ Entertainment Partnership, L.P., FCC 91-47, released February 26, 1991) have recently had occasion to reject the argument, urged here by Press, that the filing of legitimate objections can somehow be used to punish the objector.

In Naguabo, at paragraph 36, the Board observed:

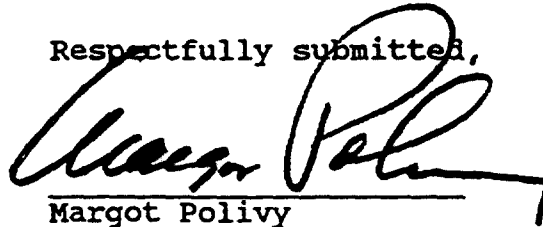
We rebuff outright the nostrum that the economic impact on WALO(AM), Archilla disclosed an "improper motive" for the Rio Grande counterproposal. [foot-note omitted] The FCC is not a kindergarten, and it can be assumed that most of those opposing an allotment or tendering a counterproposal have some economic interest in so doing. See Mt. Wilson FM Broadcasters, Inc. v. F.C.C., 884 F.2d 1462 (D.C. Cir. 1989); Amor Family Broadcasting Group v. F.C.C., 918 F.2d 960 (D.C. Cir. 1990)]. Indeed, the potential of economic injury is a prime basis for legal standing to take a position in a broadcast proceeding, and profoundly legitimate. Mt Wilson; FCC v. Sanders Brothers Radio Station, 309 U.S. 470, 476 (1940); Orange Park Florida TV, Inc. v. FCC, 811 F.2d 664, 673 (D.C. Cir. 1987). It would be supremely anomolous were we to find that a legitimate basis for standing at the threshold is, at the same time, an illegitimate bsis for the substantive position advanced. The suggestion otherwise is jejune: were all parties with an economic interest enjoined to avoid any FCC proceeding that threatened that interest, the bustling cityscape of M Street, N.W., Washington, D.C. would transmogrify into moonscape--overnight.

CONCLUSION

For the reasons stated above, Press' Petition for Reconsideration should be dismissed for want of standing; for procedural deficiency under Rule 1.106(b); and because Rainbow's extension of time to construct was in

accord with Rule 73.3534 and related Commission precedents.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Margot Polivy', written over a horizontal line.

Margot Polivy
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Counsel for Rainbow
Broadcasting Company

12 March 1991

ATTACHMENT D

Before the
FEDERAL COMMUNICATIONS COMMISSIC
Washington, D.C. 20554

In re Application of)
RAINBOW BROADCASTING COMPANY) File No. BTCCT-911129KT
For Consent to Transfer of)
Control of Construction Permit)
of Station WRBW(TV))
Orlando, Florida)

To: Roy J. Stewart, Chief
Mass Media Bureau

RAINBOW OPPOSITION TO INFORMAL OBJECTION AND REQUEST
TO HOLD APPLICATION IN ABEYANCE

Rainbow Broadcasting Company, permittee of Station WRBW, Channel 65, Orlando, Florida, opposes the "Informal Objection and Request to Hold Application in Abeyance," filed by Press Broadcasting Company, Inc., permittee of Station WKCF(TV), Clermont, Florida, on January 7, 1992. Press' Objection is no more than an effort to delay the initiation of service by a new market competitor. Press has pursued this anticompetitive course of action without regard to the applicable requirements of the Commission's rules since early 1990, when it filed an untimely objection to Rainbow's request for an extension of its construction permit, which it followed up with an unauthorized February 25, 1991 petition for reconsideration of

the grant of that request.^{1/} Taking advantage of the fortuitous continuing pendency of that unauthorized pleading, Press now offers it as a basis for holding Rainbow's pro forma transfer request in abeyance.

Press' substantive argument is based on the sheerest of speculation and surmise: i.e., that the fact that Rainbow seeks to reconfigure its equity structure into a limited partnership^{2/} (which would permit it to shift the costs of construction and initial operation to equity contributions rather than debt)-- proves that Rainbow was not financially qualified to be awarded a construction permit or that it has become unqualified and the grant should be reopened. In either event, merely by raising such a question, Press achieves its purpose of delaying market entry by a competitor.

1/ Section 1.106(b) of the Commission's Rules does not provide for the filing of petitions for reconsideration by informal objectors and the Commission has held them accordingly prohibited. Redwood Microwave Association, Inc., 61 F.C.C.2d 442, 38 R.R.2d 1073 (1976). Notwithstanding this prohibition, the Commission has not acted on Press' improper request for reconsideration, offering Press a bootstrap for the present further effort to prevent Rainbow from proceeding with the expeditious and orderly construction of its station and implementation of its proposal.

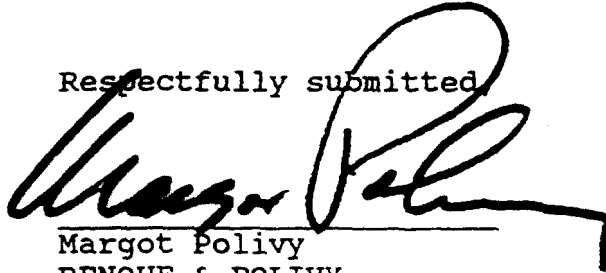
2/ As reflected in the Limited Partnership Agreement appended to Rainbow's Transfer Application, Rainbow's voting principals and their respective interests would be unchanged.

Press' assertion is without merit. Even informal objections must meet the proper evidentiary standard of affidavit and allegations. Christian Broadcasting Association, 77 F.C.C.2d 858, 47 R.R.2d 885 (1980); KHVH, Inc., 47 R.R.2d 833 (1980). Press presents a series of wholly unsupported speculations and inferences from speculations about Rainbow's intentions and expectations to conjure vague and fanciful allegations about imaginary undisclosed principals and unauthorized transfers to lend an illusory aura of legitimacy to its flagrant effort to prevent Rainbow from initiating a new UHF service to Orlando, Rainbow's community of license.

The truth, however, is that Rainbow's ownership is precisely as reported to the Commission and Rainbow's intentions are precisely as reported to the Commission. Rainbow has sought Commission approval of a short form transfer to permit it to rely upon equity financing instead of debt. This kind of prudent modification of structure is typically undertaken by construction permittees and in the case of Rainbow will involve neither change of any voting participation nor, assuming timely Commission action, any further request for extension of time to construct the station.

Press' effort to reopen Rainbow's construction permit grant, a grant already pursued through the Supreme Court, is without merit or precedent. It is no more or less than an abuse of the Commission's processes in furtherance of Press' private anticompetitive interests. The Press Informal Objection should accordingly be dismissed forthwith.

Respectfully submitted,



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Counsel for Rainbow
Broadcasting Company

30 January 1992

ATTACHMENT E

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APR 12 1993

12 April 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Clay C. Pendarvis
Chief, Television Branch
Video Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 700
Washington, D.C. 20554

Re: Station WRBW(TV)
Orlando, Florida
File No. BMPCT-910625KP

Dear Mr. Pendarvis:

This letter is in response to your letter dated March 22, 1993 requesting information as to the status of construction of Station WRBW, Channel 65, Orlando, Florida.

As recited in the attached statement of Joseph Rey, Rainbow General Partner, Rainbow has been and is prepared to complete construction and commence program test operation within six months of Commission action on its requests for extension of time to construct (BMPCT-910625KP) and Form 316 request for consent to transfer control of the permit to Rainbow Broadcasting, Ltd. (BTCCT-911129KT). Both requests have been pending since 1991.

Rainbow's status as a permittee has been the subject of continual challenges by Press Broadcasting Company, a UHF competitor in the Orlando market, since February 15, 1991, when Press filed an untimely objection to Rainbow's previous Form 307 request. That filing was followed by an unauthorized Petition for Reconsideration dated February 15, 1991. Despite the fact that Press had no standing to seek reconsideration, as noted in Rainbow's March 12, 1991 Opposition to Press Petition for Reconsideration, the request for reconsideration has not yet been acted upon by the Commission. Notwithstanding the

pendency of the challenge, Rainbow filed another timely Form 307 on June 24, 1991 and indicated its intention to undertake design and construction of its transmitter building. On November 27, 1991, Rainbow informed the Commission of the completion of the building.^{1/} No action on Rainbow's June 24, 1991 application (File No. BMPCT-910625KP) has been taken.

In November 1991, Rainbow filed a Form 316 application requesting permission to assign the construction permit to Rainbow Broadcasting, Ltd. In doing so, Rainbow noted that the voting rights would remain in the hands of the principals of Rainbow Broadcasting Company and the pro forma transfer would permit Rainbow to rely upon equity rather than debt financing. Rainbow's application, File No. BTCCT-911129KT, was the subject of yet another effort by Press Broadcasting to obstruct Rainbow's operation, in the form of an "Informal Objection and Request to Hold Application in Abeyance," filed January 7, 1992. Rainbow opposed Press' objection by pleading dated January 30, 1992. Again, no Commission action on Rainbow's requested transfer has yet been forthcoming.

In filing the November 25, 1991 request to restructure Rainbow from a general to a limited partnership, Rainbow, in contemplation of normal Commission processing periods, expressed its intention to have the station operational by the end of 1992. However, in order to go forward under the limited partnership, Rainbow required Commission approval of the transfer and a valid construction permit. In the absence of Commission action, Rainbow cannot use the funds committed to the partnership.

Rainbow is prepared to complete construction and have the station operational within six months of Commission action on its pending requests. Rainbow therefore requests simultaneous and expedited consideration of its pending applications, File Nos. BMPCT-910625KP and BTCCT-911129KT, and dismissal of Press' various objections.

Under the circumstances, Rainbow believes that its request for an extension of time to construct is contemplated under Section 73.3534(b)(2) and (3) of the

1/ Rainbow expended approximately \$60,000 to construct the transmitter building and has paid approximately \$500,000 in rental fees for its transmitter space on the Bithlo Tower.

Commission's rules. Rainbow respectfully requests that its construction permit be extended until six months after approval of its pending applications.

We would be glad to provide the Commission with any further information or documentation it would find helpful to resolution of this matter.

Very truly yours,



Margot Polivy
Counsel for Rainbow
Broadcasting Company

Attachment: Statement of Joseph Rey

Statement of Joseph Rey

I, Joseph Rey, a General Partner in Rainbow Broadcasting Company, the permittee of Station WRBW(TV), Channel 65, Orlando, Florida. This statement is written in response to a letter request of Clay C. Pendarvis, Chief, Television Branch, Video Services Division, Mass Media Bureau, dated March 22, 1993.

On June 25, 1991, Rainbow filed an F.C.C. Form 307 request to extend time to construct Station WRBW(TV) until December 31, 1992 (BMPCT-910625KP). In furtherance of that effort, Rainbow commenced construction of its transmitter building and on November 27, 1991, by Supplement to its application, advised the Commission that the construction of the \$60,000 building had been completed and that equipment bids were being received. Rainbow indicated its continuing intention to commence operation by the end of 1992.

On November 29, 1991, Rainbow filed an F.C.C. Form 316 to permit change of the permittee's structure to a limited partnership (File No. BTCCT-911129KT). Rainbow proposed the reorganization to reduce the permittee's reliance on debt in favor of nonvoting equity contributions. Assuming normal F.C.C. processing time, the permittee foresaw no delay in its scheduled December 31,

1992 commencement date. However, for reasons unknown to the permittee, the Commission did not act on Rainbow's Form 316 application. In fact, no action on the reorganization has been taken thus far. Until the reorganization request is acted upon, Rainbow cannot use the limited partnership funds to effect construction.

Rainbow has selected equipment and has sufficient committed funds to purchase the equipment, construct the station and operate without revenue for the required initial period. Release of those funds is tied to F.C.C. approval of the transfer of the permit to Rainbow Broadcasting, Ltd. Rainbow projects that the station would commence program test operation within five (5) months of a final F.C.C. action extending its construction permit and granting the pending transfer of control request. In order to go forward, Rainbow requires favorable action on both pending requests. If the transfer request is not granted, Rainbow will go back to its lenders for a reaffirmation of their commitments.

As a practical matter, Rainbow has been in limbo since November 1991. We anticipated Commission action on BMPCT-910625KP and BTCCT-911129KT in the first half of 1992. No action was forthcoming. Rainbow was prepared then and is prepared now to go forward on a six month